

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JOE SOLO, et al.

Plaintiffs,

vs.

No. 14-cv-12719
Hon. Gerald E. Rosen

**UNITED PARCEL SERVICE
COMPANY**

Defendant.

**OPINION AND ORDER DENYING PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION WITHOUT PREJUDICE**

In this companion case to *Sivak v. United Parcel Service Company*, 13-cv-15263, Plaintiffs echo the same theories of liability that were at issue in *Sivak* based on their assertion that UPS overcharges customers who pay for loss/damage insurance.¹ Currently before the Court is Plaintiffs' Motion for Class Certification. (Plfs' Mtn., Dkt. # 5). Plaintiffs did not support their Motion with any evidence and instead filed it to avoid any attempt by Defendant to pick-off putative class members through an offer of judgment. (*Id.* at 3). Recognizing its prematurity, Plaintiffs "reserve the right to amend or modify the classes and subclasses they seek to have certified after any appropriate discovery has occurred" and request

¹ The *Sivak* Plaintiffs have filed a motion to vacate judgment and consolidate these cases. (13-cv-15263, Dkt. # 38). The Court addresses that motion in a separate opinion.

that this Court “set a briefing schedule that takes into an (sic) account any discovery needs preparatory to determination of the class certification issues in this case.” (*Id.* at 3-4).

Plaintiffs’ attorney filed a nearly identical motion in the *Sivak* matter, which this Court denied without prejudice. (13-cv-15263, Dkt. # 10). As with the *Sivak* class certification motion, Plaintiffs’ Motion “is premature and, without basic supporting evidence, prevents this Court from conducting a ‘rigorous analysis’ as to whether Plaintiffs have satisfied Federal Rule of Civil Procedure 23(a)’s prerequisites.” (*Id.* at 2) (citing *Wal-Mart Stores v. Dukes*, 131 S.Ct. 2541, 2551 (2011)). Moreover, “[i]t is the Court’s experience that discovery and potential further motion practice provides a necessary preamble to class certification issues.” (*Id.*).

For all of the foregoing reasons and those set forth in this Court’s January 21, 2014 Opinion and Order in the *Sivak* matter,

IT IS ORDERED that Plaintiffs’ Motion for Class Certification (Dkt. # 5) is DENIED WITHOUT PREJUDICE, pending discovery and future motion practice.

IT IS SO ORDERED.

Dated: August 12, 2014

s/Gerald E. Rosen
Chief, Judge, United States District Court

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on August 12, 2014, by electronic and/or ordinary mail.

s/Julie Owens

Case Manager, (313) 234-5135